IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION

NO. 4:13-CR-6-1-BO NO. 4:15-CV-33-BO

| TRON LAKEY DAVIS, |) | |
|---------------------------|---|--------------|
| Petitioner, |) | |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | • |
| UNITED STATES OF AMERICA, |) | |
| Respondent. |) | |

This matter is before the Court on petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The government responded to the § 2255 motion opposing relief on all but petitioner's claim that his counsel was ineffective in failing to object to the term of supervised release imposed on count six. The Court appointed counsel for petitioner and set this matter for evidentiary hearing to determine whether counsel was ineffective in advising petitioner to withdraw his appeal noted in the court of appeals. [DE 95].

On August 21, 2015, just days prior to the evidentiary hearing, the government, without conceding that counsel was ineffective in advising petitioner to withdraw his appeal, now moves to correct and reenter judgment so that petitioner may pursue his direct appeal. [DE 105]. Counsel for petitioner has advised that he does not oppose the motion. Thus, the Court finds that the appropriate remedy in this matter is to reenter petitioner's judgment of conviction so that he might have an opportunity to pursue a direct appeal. The Court further finds that, although the government agrees with petitioner that the Court exceeded its statutory authority in imposing a lifetime term of supervised release on count six, this issue is more appropriately raised on direct review and the Court declines to enter a corrected judgment in this matter.

CONCLUSION

For the foregoing reasons, the government's motion to correct and reenter judgment [DE 105] is GRANTED IN PART and DENIED IN PART. The Clerk of Court is DIRECTED to VACATE the judgment entered on the docket on November 15, 2013, and amended on November 27, 2013. [DE 62 & 70]. The clerk is further DIRECTED to reenter a new, identical judgment as of the date of entry of this order so that petitioner may notice an appeal consistent with the Federal Rules of Appellate Procedure should he so choose. Petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [DE 82, 89, 91] is DISMISSED WITHOUT PREJUDICE. In light of the foregoing, the hearing set in this matter on August 25, 2015, is cancelled.

SO ORDERED, this 21 day of August, 2015.

TERRENCE W. BOYLE

UNITED STATES DISTRICT JUDGE